Supreme Court, U. S.
FILED
APR 21 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1462

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Los Angeles, California 90016
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In Propria Persona

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Appellees and Respondents.

PETITION FOR WRIT OF CERTIORARI

Petitioner, FLOYD HIRAM DANIELS, petitions for Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on February 7, 1977, in which Appellant's Petition For Rehearing filed on December 27, 1976 was DENIED, and thereby affirming the United States

District Court for the Central District of California; wherein, Petitioner's Motion For Leave To File Amended Complaint was DENIED and entered on May 5, 1976.

Petitioner alleges:

OPINIONS BELOW

The opinion(s) delivered in the Courts below have not been reported. The Memorandum Opinion Dismissing Appellant's Appeal, and the order entered on February 7, 1977, in which Appellant's Petition For Rehearing filed on December 27, 1976 was denied by the Court of Appeals for the Ninth Circuit is not appended to this Petition.

JURISDICTION

The grounds on which the jurisdiction of this Court is invoked is that the Court of Appeals has decided two (2) important questions of federal law which should be settled by this Court.

1. The District Court Order entered on May 5, 1976, in which Plaintiff's Motion For Leave To File Amended Complaint was denied.

2. The Order of the United States Court of Appeals, Ninth Circuit, that was entered on February 7, 1977; in which, Appellant's Petition For Rehearing was

denied on the Dismissal of Appeal in Petitioner's Cause of Action.

The statutory provision believed by Petitioner to confer on this Court's jurisdiction to review the judgment in question by Writ of Certiorari are Title 42, U.S.C., Section 1981; California Code of Civil Procedure, Section 337(1); Rules 15(b) and 15(b), Title 28, Federal Rules of Civil Procedure; Rule 60(b), Title 28, Federal Rules of Civil Procedure; and, the 14th Amendment of the Constitution of these United States.

QUESTIONS PRESENTED

The questions presented for review are as follows:

A. Whether the District Court improperly denied Petitioner's Motion For Leave To File Amended Complaint, to conform to the evidence; and establish jurisdiction pursuant to Title 42, U.S.C., Section 1981, based upon Material Newly Discovered Evidence of Racial Discrimination; and, to establish jurisdiction pursuant to the California Code of Civil Procedure, Section 337(1), as the most appropriate State Law controlling the Statute of Limitations in this Cause of Action based upon a Discriminatory Breach of the Written Contract?

B. Whether the United States Court of Appeals, Ninth Circuit, improperly denied Petitioner's Petition For

Rehearing for correcting Petitioner's mistake made in filing the Motions on December 15, 1975, pursuant to Rule 60(b), (1), Title 28, Federal Rules of Civil Procedure, and filing Motion For Leave to File Amended Complaint, as a motion in the District Court on January 21, 1976, pursuant to Rules 15(b), and Rule 60(b), Title 28, Federal Rules of Civil Procedure, also, in which Petitioner abided by the "Sound Discretion of the District Court" in seeking relief from a "final judgment" of the District Court?

STATUTES INVOLVED

The Statutes involved in this Case are the 14th Amendment of the Constitution of the United States of America; Title 42, U.S.C., Section 1981; 337(1), California Code of Civil Procedure; Rule 15(b) and 15(c), Title 28, Federal Rules of Civil Procedure; and, Rule 60(b), Title 28, Federal Rules of Civil Porcedure.

The 14th Amendment of the Constitution of the United States of America provides: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Title 42, U.S.C., Section 1981 provides: All person within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977.

337(1), California Code of Civil Procedure provides: Within four years: 1. An action upon any contract obligation or liability founded upon an instrument in writing, except as provided in section 336a of this code; provided, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power or sale upon real property or any interest therein was given as security, following the exercise of the power of sale in sale in such deed of trust or or mortgage may be brought shall not extend beyond three months after the time of the sale under such deed of trust or mortgage.

Rule 15(b), Title 28, Federal

Rules of Civil Procedure provides: (b) Amendments to conform to Evidence. When issues not raised by the pleadings are tried by express or implied consent of parties, they shall be treated in all respect as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon Motion of any party at any time even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant continuance to enable the objecting party to meet such evidence.

Rule 15(c), Title 28, Federal Rules of Civil Procedure, in pertinent part provides: (c) Relation Back of Amendments. When the claim of defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Rule 60(b), Title 28, Federal

Rules of Civil Procedure provides: Rule 60(b) provides, On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed, or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., Section 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the

nature of a bill of review, or abolished, and the procedure for obtaining an relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

CONCISE STATEMENT OF CASE

The statement of the Case is more fully stated in Petitioner's Statement Of The Case in his Opening Brief tc the Court of Appeals for the Ninth Circuit, is in the Appendix.

The facts material to the consideration of the questions presented are as follows:

Petitioner was employed by Respondents as a Bus Operator on January 11, 1964.

After a conference with the Division Manager, Mr. James Carson, Petitioner filed an application to teach in the Los Angeles Unified School on September 26, 1968. A condidential Reference of Approval was submitted to the Los Angeles Unified School District by Respondents on October 3, 1968.

Petitioner started performing dual employment of operating a bus in the late evenings and nights; and teaching Mathematics in the Los Angeles Unified School District during the day on October 28, 1968. Petitioner continued this dual employment with an excellent

driving record, and an excellent teaching record through March 20, 1970; when Petitioner was arrested on an allegation a female passenger who signed a complaint with the Los Angeles Police Department.

On March 27, 1970, Petitioner was put on an agreed suspension by Respondents.

On April 24, 1970, Respondents broke the agreed signed suspension, and discharged Petitioner.

On June 19, 1970, Petitioner received a Verdict of NOT GUILTY by an Honorable Judge and Jury in the Superior Court in, and for the County of Los Angeles.

On July 19, 1970, Petitioner was reinstated to the service of operating a bus for Respondents, with the conditions that operating bus for Respondents would be Petitioner's only employment.

Pursuant to Article 27, Section 10, of the Written Contract, Petitioner and the Union appealed the reinstatement with conditions to the next level of appeals in accordance with the Written Contract.

On September 17, 1970, the Union pursuant to Article 27, Section 11, of the Written Contract wrote a letter to Respondents requesting arbitration in behalf of Petitioner's reinstatement with conditions.

The Union's request of September 17, 1970 was totally ignored by Respondents.

On February 8, 1971, Petitioner was finally racially discriminatorily discharged.

After three years, but less than four years of litigations, Petitioner secured the services of an Attorney, who with Petitioner filed the Original Complaint For Discriminatory Breach Of Contract For Damages in the Federal District Court, Central District, Los Angeles, California, on January 28, 1975.

The original complaint was dismissed by a judgment order entered on April 24, 1975; which was barred by 338(1), C.C.P., "A Liability Created by Statute".

On June 9, 1975, Petitioner's Motion To Vacate Judgment was denied, and an amended judgment order was entered on June 12, 1975, to include both Title 42, U.S.C., Section 1981; and 338(1), C.C.P., to bar the original complaint.

Petitioner did not appeal the above District Court order. It was very simple. There was a Written Contract and it had been filed in the pleadings, but Petitioner could not substantiate any evidence of racial discrimination; and as a result Petitioner could not substantiate any evidence of a breach of a Written Contract. Although, Petitioner had been, and was still diligently

searching for material evidence of racial discrimination, but Petitioner could not find it. The Attorney for Petitioner resigned from the Case because the possibility of discovery of racial discrimination was very slim and remote.

1. MATERIAL NEWLY DISCOVERED EVIDENCE

On October 29, 1975, Petitioner received information in the form of a telephone call of possible racial discrimation. This information had to be checked out; and, it required the employment of the Whelen Investigation Agency, 1807 West Beverly Boulevard, Los Angeles, California.

On November 18, 1975, Material Newly Discovered Evidence was discovered. This Material Newly Discovered Evidence consisted of four (4) White Bus Operator Employees (Caucasian) of Respondents who were performing dual employment. These four (4) White Bus Operator Employees (Caucasian) were found to be performing this dual employment long before Petitioner (Black) started performing his dual employment. These four (4) White Bus Operator Employees (Caucasian) were also performing dual employment when Petitioner (Black) was finally racially discriminatorily discharged on February 8, 1971. These four (4) White Bus Operator Employees (Caucasian) have continued to perform dual employment some six (6) years, and more after Petitioner was finally discharged. These

four (4) White Bus Operator Employees (Caucasian) were members of the Written Contract in which Petitioner (Black) was also, a member of the Written Contract. The Written Contract existed between Respondents and the United Transportation Union for all bus operators employed by Respondents. Respondents deducted a certain amount of each bus operator's earnings each month for membership dues in order to be protected by the Written Contract.

Respondents have not contested the above Material Newly Discovered Evidence. In fact, Respondents have stated the following:

> "Defendants will not in the interest of brevity, and in the hope of contributing to conservation of judicial time, contest the nature of the alledged newly discovered evidence, or the adequacy of Plaintiff's procedure."

2. PETITIONER MISTAKENLY FILED MOTION FOR LEAVE TO FILE AMENDED COMPLAINT, ATTACHED HERETO, AS AN EXHIBIT

As a result of the discovery of Material Newly Discovered Evidence, Petitioner filed the Motion To Vacate Judgment; in the District Court on December 15, 1975. Also, Petitioner mistakenly and incorrectly attached the

Motion For Leave To File Amended Complaint to the Motion To Vacate Judgment, hereto, as an exhibit.

The District Court held a Court Hearing on the above motions on January 12, 1976. The Motion To Vacate Judgment, and the Motion For Leave To File Amended Complaint, which was mistakenly and incorrectly attached hereto, as an exhibit, was denied in an order by the District Court entered on January 14, 1976.

3. PETITIONER CORRECTS MISTAKE

Based upon the District Court Hearing on January 12, 1976, Petitioner on January 15, 1976, called the District Court Clerk of the Honorable Judge E. Avery Crary's Court by telephone; and informed the District Court Clerk that He, Petitioner, was correcting his mistake by filing the Motion For Leave To File Amended Complaint, as a motion. Petitioner also, requested a date for hearing of the Motion so Petitioner could put it in the Notice Of Hearing on the Motion to be filed. The District Court Clerk gave Petitioner the date of April 26, 1976. The District Court Clerk explained to Petitioner the reason for giving a date that far in advanced was due to the Honorable E. Avery Crary's Court would be adjourned from January 20, 1976, until April 6, 1976.

On January 21, 1976, Petitioner went to the United State Courthouse,

321 North Spring Street, Los Angeles, California; and went into the Honorable E. Avery Crary's Court Clerk's office for the purpose of filing the Motion For Leave To File Amended Complaint. The Clerk read Petitioner's Motion; and, when the Clerk had finished reading and inspecting Petitioner's Motion, the Clerk arosed from chair and desk with Petitioner's Motion, and left his office. After approximately forty-five (45) minutes, the Clerk returned and stated, "Sure, you can file your Motion". The Clerk then put his stamp on the Motion For Leave To File Amended Complaint, and took his pen and initailed the stamp.

So, on the "sound discretion of the District Court," Petitioner filed Motion For Leave To File Amended Complaint in order to seek relief from final judgment of the District Court, on January 21, 1976, correcting the mistake that was made in the filing of motion on December 15, 1975.

On the "sound discretion of the District Court," Defendants was permitted to file a Motion In Opposition To Motion For Leave To File Amended Complaint; and, Petitioner was permitted by the District Court to file Motion In Support Of Motion For Leave To File Amended Complaint.

On the "sound discretion of the District Court", a District Court Hearing was held on April 26, 1976, on Petitioner's Motion For Leave To File Amended Complaint. The Motion was denied by the District Court order entered on

May 5, 1976.

On May 12, 1976, Petitioner filed Notice Of Appeal.

The Designation Of Record On Appeal was filed by Petitioner on May 17, 1976.

All documents were timely filed with the United States Court of Appeals, Ninth Circuit.

The United States Court of Appeals, Ninth Circuit filed a Memorandum on December 8, 1976, in which the Court dismissed Petitioner's Appeal.

A Petition For Rehearing was filed in the Court Of Appeals on December 27, 1976.

The Petition For Rehearing was denied by the Court Of Appeals on February 7, 1977.

The basis for Federal Jurisdiction is that Petitioner, a Citizen of these United States of America, have been denied the right to correct mistake in accordance with Federal Rule 60(b)(1), Title 28, Federal Rules of Civil Procedure; and file Motion For Leave To File Amended Complaint, as a motion pursuant to Rule 15(b), Title 28, Federal Rules of Civil Procedure; and in accordance with Rule 60(b)(2), Title 28, Federal Rules of Civil Procedure; to Conform to the Material Newly Discovered Evidence of Racial Discrimination pursuant to Title 42, U.S.C., Section 1981;

and conform to the evidence of Discriminatory Breach of a Written Contract, pursuant to 337(1), California Code of Civil Procedure, as the most appropriate California State Law controlling the statute of limitations in Petitioner's 1981 Cause of Action.

As a result of the above, Petitioner have been denied the right as a Citizen of these United States of America the Due Process of Law and Equal Protection in the Federal Court as precribed by the 14th Amendment of the United States Constitution.

ARGUMENT

Petitioner presents the following argument in his behalf:

I. THE UNITED STATES COURT OF APPEALS, NINTH CIRCUIT, IMPROPERLY DISMISSED PETITIONER'S APPEAL OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

The Court of Appeals, in pertinent part:

> "Because a final judgment had been entered against plaintiff and because the court had denied plaintiff's motion to set judgment aside under Rule 60, the second motion for leave to file an amended complaint has no significance."

A. MOTIONS FOR RELIEF FROM FINAL JUDGMENT ON GROUNDS OF RULE 60(b), TITLE 28, FEDERAL RULES OF CIVIL PROCEDURE IS ADDRESSED TO "SOUND DISCRETION OF THE FEDERAL DISTRICT COURT

B. Petitioner Made Mistake In The Filing Of Motions On December 15, 1975

As a result of the discovery of material evidence of Racial Discrimination, Petitioner made a mistake of filing the Motion To Vacate Judgment; and, attaching the Motion For Leave To File Amended Complaint, hereto, as an Exhibit "E", in the District Court on December 15, 1975.

Although, mistakenly filed, based upon Rule 60(b), Title 28, Federal Rules of Civil Procedure; the Motion To Vacate Judgment was timely filed in the District Court on December 15, 1975.

C. District Court Hearing

During the District Court Hearing on January 12, 1976, the following conversation took place, in pertinent part:

> "THE COURT: He is saying that, that is what his Complaint says, as I understand it. He is saying now that it is still occur-

ing.

Mr. Daniels: That is right, your Honor.

THE COURT: That would be a new cause of Action.

Mr. Conlon: That may well be, your Honor.

THE COURT: He hasn't alleged it. No, the Motion to Vacate.

Mr. Daniels: May I say a little more, sir?

THE COURT: Well, I understand your position, Mr. Daniels, I understand your position. If you file a new suit, maybe you have some grounds for a new action."

The Motion To Vacate Judgment, and the Motion For Leave To File Amended Complaint, attached hereto, as Exhibit "E", were both denied as motions in an order by the District Court entered on January 14, 1976.

D. Rule 60(b),(1), Title 28, Federal Rules Of Civil Procedure

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Petitioner corrected his mistake pursuant to Rule 60(b),(1), Title 28, Federal Rules of Civil Procedure.

Petitioner discovered and realized that He, Petitioner, had made a mistake in filing his motions on December 15, 1975. Based upon the above transcript, Petitioner contacted the District Court about correcting his mistake by filing the Motion For Leave To File Amended Complaint, as a motion to seek relief from the final judgment of the District Court.

On the "Sound Discretion of the District Court", Petitioner was given the date of April 26, 1976, as a date for Hearing the Motion For Leave To File Amended Complaint.

Petitioner corrected the mistake made in filing the motions on December 15, 1975, by striking the Motion To Vacate Judgment; and, filing the Motion For Leave To File Amended Complaint, as a motion.

On the "Sound Discretion of the District Court", Petitioner was permitted, and Petitioner filed the Motion For Leave To File Amended Complaint in the District Court on January 21, 1976, as a motion to seek relief from the final judgment of the District Court.

E. Rule 60(b),(2), Title 28, Federal Rules Of Civil Procedure

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Petitioner filed the Motion For Leave To File Amended Complaint in the

District Court on January 21, 1976, pursuant to Rule 60(b),(2), Title 28, Federal Rules of Civil Procedure, by attaching an affidavit on, Material Newly Discovered Evidence, By Floyd H. Daniels.

As a result of the discovery of material newly discovered evidence, which has also been brought out in the state-of the Case; and, in the statement of the Case in Petitioner's Opening Brief to the Court of Appeals, presented in the Appendix; which substantiates that petitioner (Black) was discharged on Febraury 8, 1971, for performing dual employment; while four (4) White Bus Operator Employees (Caucasian) were NOT discharged. These four (4) White Bus Operator Employees (Caucasian) have been permitted by Respondents to continue this dual employment. These four (4) White Bus Operator Employees (Caucasian), and Petitioner (Black) were members of the very same Written Contract.

Therefore, Petitioner (Black) was denied a "Right" that "White People (Caucasian)" enjoy, when Petitioner (Black) was discharged on February 8, 1971, because of Petitioner's Race - Negro (Black). This is Racial Discrimination, and a Discriminatory Breach of the Written Contract. This is a violation of the Federal Statute of the United States, Title 42, U.S.C., Section 1981, which states, as follows:

"All persons within the Jurisdiction of the United States shall have the same

right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977."

This United States Supreme Court ruled in Johnson v. Railway Express Agency on June 19, 1975, the followings:

"B. Title 42, U.S.C., 1981, being the present codification of one of the century-old Civil Rights Acts of 1966, 14 Stat. 27, on the other hand, on its face relates primarily to racial discrination in the making enforcement of contracts. Although this Court has not specifically so held, it is well settled among the federal courts of appeals -- and we now join them -- that 1981 affords a federal remedy against discrimination in private employment on the basis of race. An individual who establishes a cause of action under 1981 is entitled to both equitable and legal

relief, including compensatory and, under certain circumstances, punitive damages. See, e.g. Caperci v. Huntoon, 397 F.2d 799 (CAI), cert denied, 393, U.S. 940 (1968); Mansell v. Saunders, 372 F.2d 573 (CA5 1967). And a backpay award under 1981 is not restricted to the two years specified for backpay recover under Title VII." Johnson v. Railway Express Agency, 421 U.S. 454 (1975).

This United States Supreme Court again Ruled in 1976:

"Title 42, U.S.C., 1981 provides in pertinent part that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as is enjoyed by white citizens .... We have previously held where discrimination against Negroes was in question, that 1981 afford a federal remedy against discrimination in private employment on the basis of race, and respondents do not contend otherwise." I.N. McDonald and Raymond L. Laird v. Santa Fe Trail Transprotation Company et al., No. 75-260, --US -- 44 LW 5067.

In regard to time for motion:

RULE 60(b), PROVIDES, THE MOTION SHALL BE MADE WITHIN A REASONABLE TIME, AND FOR REASONS (1), (2), AND (3), NOT MORE THAN ONE YEAR AFTER JUDGMENT, ORDER, OR PROCEEDING WAS ENTERED OR TAKEN.

The United States Court of Appeals, Fifth Circuit, have ruled:

> "Relief from final judgment is permitted under federal rule by motion or by independent action. Fed.Rules. Civ. Pros. rule 60(b), 28 U.S.C.A." Banders Mortgage Company v. United States 423 F.2d. 73, (1970).

F. Rule 15(b), Title 28, Federal Rules of Civil Procedure Amendments To Conform To The Evidence

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Petitioner, pursuant to the above Rule 15(b), filed Motion For Leave To File Amended Complaint, in the District Court on January 21, 1976, to conform to the material newly discovered evidence of Racial Discrimination, and a Breach of A Written Contract; and, establish jurisdiction pursuant to Title 42, U.S.C., Section 1981; and, 337(1), California Code of Civil Procedure, as the most appropriate California State Law Controlling the Statute of Limitations in this Title 42, U.S.C., Section 1981 Cause of

Action. The statute of limitations will be discussed more fully in Section II of this Argument.

The United States Court of Appeals, 8th Circuit, held:

> "Leave to amend pleadings should be freely granted when necessary to establish jurisdiction."

Also, again:

> "Amendments of pleadings to establish jurisdiction may be made following dismissal of a complaint." United Steelworker of America, AFL-CIO v. Mesker Bros Industries, Inc., C.A. Mo., 1972, 457 F.2d 91.

The United States Court of Appeals, Seventh Circuit, held:

> "Upon remand, plaintiff could as a matter of course amend her civil rights complaint to allege violation of the equal protection clause." Bett v. Board of Ed., City of Chicago, C.A. Ill. (1972) 466 F.2d 629.

G. Motion To Amend - Timeless.

There is no specific limitation of time for the purpose of filing a Motion For Leave To File Amended Com-

plaint. The limitation period appears to be governed by all of the facts and circumstances presented in each individual case.

H. Petitioner's Motion For Leave To File Amended Complaint Does Not Prejudice Respondents.

The Material Newly Discovered Evidence consist of Bus Operator Employees (Caucasian) who were employed by Respondents on, and before February 8, 1971; and they are currently still employed. The Bus Operator Employee(Caucasian) were members of the Written Contract in question on, and before February 8, 1971; and still remain members of the Written Contract in question. These Bus Operator Employees (Caucasian) worked under Respondents's Rule #7 on and before February 8, 1971; and they are currently still working under Respondents' Rule #7.

Since the Material Newly Discovered Evidence was, and still remains within the employment of Respondents, there clearly appears not to be any prejudice whatsoever, in that Respondents can always check their own records of employment.

I. Rule 15(c), Title 28, Federal Rules of Civil Procedure. Relation Back Amendments.

The United States Court of Appeals, Fifth Circuit, held:

> "This rule providing that amendments of pleading arising out of conduct, transaction or occurrence set forth in original pleading shall relate back to date of original pleading was designed so that cases would be determined on their merits, not technicalities." Taromina Corp. v. Escobedo, C.A.Tex. 1958, 254 F.2d 171, Certiorari denied, 79 S.Ct. 44, 358 U.S. 827, 3 L. Ed.2d 66.

The United States Court of Appeals, Second Circuit, held:

> "These rules were intended to facilitate the application of substantive law and not to fight it, and they contemplate free amending privileges." Brown v. Dunbar & Sullivan Dredging Co., C.A.N.Y. 1951, 189 F.2d 871.

J. Sound Discretion Of The District Court.

Upon the sound discretion of the District Court, Petitioner was permitted to correct his mistake by filing the Motion For Leave To File Amended Complaint in the District Court on January

21, 1976, in order to seek relief from a final judgment of the District Court entered on January 14, 1976.

The Motion For Leave To File Amended Complaint filed in the District Court on January 21, 1976 was in accordance with Federal Rules 15(b),and 15(c); and Rule 60(b), (1) and (2), Title 28, Federal Rules of Civil Procedure.

Upon the sound Discretion of the District Court, Respondents was permitted, and did file Motion In Opposition To Motion For Leave To File Amended Complaint in the District Court. Petitioner, also was permitted, and did file Motion In Support Of Motion For Leave To File Amended Complaint in the District Court.

Upon the Sound discretion of the District Court, the District Court held a District Court Hearing on Petitioner's Motion For Leave To File Amended Complaint on April 26, 1976.

The Motion For Leave To File Amended Complaint was denied by an order of the District Court entered on May 5, 1976.

Based upon the Federal District Court procedure provided by the District Court to Petitioner, who complied with the sound discretion of the District Court, guarded by accepted legal principles, and in the absence of an abuse of discretion; Petitioner filed the Motion For Leave To File Amended Complaint in

the District Court on January 21, 1976.

Therefore, the Motion For Leave To File Amended Complaint filed in the District Court on January 21, 1976, is of significance; and, the District Court order entered on May 5, 1976, is an appealable order. This is the order from which Petitioner has taken an appeal, having been filed on May 12, 1976.

In support of the above District Court procedure based upon the "Sound Discretion of the District Court", in granting Petitioner the "Right" to file motion in order to seek relief from a final judgment of the District Court; the Federal Courts have ruled the followings:

The Federal District Court in the State of Texas ruled the following; and, this Ruling was affirmed by the United States Court of Appeals, Fifth Circuit:

> "This rule allowing relief from mistakes, etc., is liberally construed." Oliver v. Monsanto Co., D.C.Tex. 1972, 56 F.R.D. 370, affirmed 487 F.2d. 514, (1972).

The United States Court of Appeals, Fifth Circuit, held:

> "Motions for relief from a final judgment are addressed to sound discretion of the district court, guarded by accepted legal principles, and in absence of an abuse

of discretion the Court of Appeals will not review the district court's determination."

Also, again the Court of Appeals held:

"Rule 60(b) allows the district court, on motions and upon such terms as are just, to relieve a party from the effects of a final judgment for any of a number of reasons. Among those reasons are mistake, surprise, excusable neglect, newly discovered evidence, fraud, release, and satisfaction." James J. Hand, Jr. v. United States. 441 F.2d 529, (1971).

The United States Court of Appeals, Tenth Circuit, held:

"Motion for relief from judgment or order for mistake, inadvertence, excusable nelect, newly discovered evidence or fraud is addressed to sound discretion of trail court. Fed.Rules Civ.Proc. rule 60(b), 28 U.S.C.A." Wilkin v. Sunbeam Corporation, 466 F.2d 714 (1972).

The United States Court of Appeals, Ninth Circuit, held:

"Motions under federal rule of civil procedure for relief

from judgment are addressed to sound discretion of district court. Fed.Rules Civ. proc. rule 60(b), 28 U.S. C.A." Martella v. Marine Cooks & Stewards U., Seafarers Int. U., 448 F.2d. 729 (1971).

The United States Court of Appeals, Tenth Circuit, held:

"Motion for relief from final judgment on ground of newly discovered evidence is addressed to sound discretion of trial court, and granting or denial of motion will not be disturbed on appeal except manifest abuse of discretion. Fed.Rules Civ.Proc. rule 60(b),(b),(2), 28 U.S.C.A." Valmont Industries, Inc., v. Enresco, Inc., 446 F.2d. 1193, (1971).

Based upon the above Federal Court Dicisions, including a Dicision by the United States Court of Appeals, Ninth Circuit, on the "Sound Discretion of the District Court" in granting or denying motions for relief of a final judgment; Petitioner's Appeal should NOT have been dimissed; and, Petitioner's Petition For Rehearing, should NOT have been denied. The dismissal of Petitioner's Appeal, and the denial of Petition For Rehearing clearly show an inconsistancy on the part of the United States Court of Appeals, Ninth Circuit's Ruling in regard to the "Sound Discretion of the District Court"

in the absence of an abuse of discretion of the District Court.

This inconsistant Ruling by the United States Court of Appeals, Ninth Circuit has created a federal question in this Title 42, U.S.C., Section 1981 Cause of Action that this United States Supreme Court should review and change the dicision of the Court of Appeals.

II. THE DISTRICT COURT IMPROPERLY DENIED PETITIONER'S "MOTION FOR LEAVE TO FILE AMENDED COMPLAINT."

A. District Court Cited Four (4) Cases as Reason For Denying Petitioner's Motion For Leave To File Amended Complaint.

"THE COURT: Well I know. You are trying to get under the four-year Statute of Limitations. But the cases are against you, Mr. Daniels. That's all there is to it. The cases are against you. I will give you the citations, and you can decide, then, whether you want to appeal, because it is just one of those things."

The District gave the following Citations:

1. Smith v. Cremins, 308 F.2d 187;
2. Willis v. Reddin, 418 F.2d 702;

3. Donovan v. Reinbold, 433 F.2d. 738;
4. Johnson v. Bayless, Memorandum, March 3, 1975.

The above four (4) Cases will reveal that, not at any time did the plaintiffs in each Case try to show, or substantiate that there was Written Contract involved in their Civil Rights Actions. Therefore, 338(1), C.C.P., "A Liability Created by Statute" was ruled the Controlling Statute of Limitations in each of the above four (4) Cases.

Also, it is noted at this time, that "Johnson v. Bayless", Memorandum is an unpublished Decision.

B. A Discriminatory Breach Of The Written Contract

Petitioner has substantiated, without a doubt, in the Concise Statement of the Case in this Writ of Certiorari; and, in the Statement of the Case in the Opening Brief, in pertinent part, to the Court of Appeals, in the Appendix, that there was in fact a BINDING AGREEMENT - WRITTEN CONTRACT between Respondents and the United Transportation Union, in which Petitioner was a bonafide member.

Petitioner, also, has substantiated that Hearings, and Appeal Hearings were held by Respondents, in behalf of Petitioner's Discipline Matter; and, in accordance with the Written Contract.

Also, Petitioner has substantiated that after a review of all of these Hearings, and Appeal Hearings, Petitioner (Black) was blamed for performing dual employment; and Petitioner (Black) was finally racially discriminatorily discharged on February 8, 1971; while four (4) White Bus Operator Employees (Caucasian) were NOT blamed for performing dual employment; and, was NOT discharged. In fact, these four (b) White Bus Operator Employees (Caucasian) have been permitted by Respondents to continue this dual employment.

These four (4) White Bus Operator Employees (Caucasian), and Petitioner (Black) were members of the same Written Contract.

Respondests deducted $10.50 per month from Petitioner's Earnings for the payment of membership dues in order that Petitioner would be protected by the Written Contract.

Therefore, when Petitioner was Racially Discriminatorily Discharged on February 8, 1971, it involved, and created a Discriminatory Breach of the WRITTEN CONTRACT.

Petitioner, therefore, has filed Motion For Leave To File Amended Complaint, pursuant to Rule 15(b), to conform to the evidence of the Discriminatory Breach of the Written Contract by inserting the apecific part of the Written Contract that was breached when Petitioner was racially discriminatorily

discharged on February 8, 1971; which is Article #27, Section #1, Part (e), of the Written Contract, in pertinent part:

> "If, after a review of suspension discharge, or disqualification, it is mutually agreed that an employee who was suspended, discharged or disqualified, was completely blameless of charges regarding the offense, he shall be reinstated to his former position without loss of seniority and will be paid wages lost as though he had not been suspended or discharged. It is mutually agreed that no entry shall be made on the employee's record of such suspension, discharge, or disqualification, if by mutual agreement the employee was found to be completely blameless."

Based upon the above Discriminatory Breach of Written Contract, Petitioner filed Motion For Leave To File Amended Complaint, pursuant to Federal Rule 15(b), to conform to the evidence of a Discriminatory Breach of Written Contract; and, establish jurisdiction pursuant to Section 337(1), California Code of Civil Procedure, as the most appropriate California State Law controlling the Statute of Limitations in this Title 42, U.S.C., Section 1981, Cause of Action.

In support of the above, Petitioner cite the followings:

The California Code of Civil Procedure, Section 337(1); in pertinent part:

> "Within four years: 1. An action upon any contract obligation or liability founded upon an instrument in writing."

The California Courts held:

> "An action to recover damages for the breach of a written contract is founded upon a written instrument, within the meaning of subdivision 1 of section 337 of the Code of Civil Procedure, providing a four years' limitation for the commencement of such actions." Ahlers v. Smiley, 163 Cal. 200, (1912).

The California Court, also, have held:

> "An action on a written contingent fee contract for legal services rendered was filed in time where it was filed well within the four - year period prescribed by Code Civ. Proc. 337. Subd. 1; the two-year period prescribed by Code Civ. Proc. 339, Subd. 1, for abligations not founded on a written instrument, did not apply." Stone v. Carpenter, 27 Cal. Rptr. 203, (1963)

The California Courts, in 1955, held:

> "A liability created by statute is one in which no element of agreement enters. It is an obligation which the law creates in the absence of an agreement." Gardner v. Basich Bros. Const. Co., 44 Cal.2d 191 (1955).

The United States Court of Appeals, Ninth Circuit, in 1962, held:

> "The California courts have held that an action is based 'upon a liability created by statute,' within the meaning of section 338(1), if the liability would not exist but for statute. Or, conversely, an action is not based 'upon a liability created by statute' if the right is one which would exist at common law in the absence of statute." Smith v. Cremins, 308 F.2d 187 (1962).

The United States Court of Appeals, Third Circuit, in 1967, held:

> "Since the Civil Rights Act contains no provision limiting the time within which an action thereunder may be brought, the applicable

Statute of Limitations is that which the State would enforce had the action seeking similar relief been been brought in State Court." Henig v. Odorioso, 385 F.2d 491 (1967).

The United States Court of Appeals, Third Circuit, again in 1971, held:

"There is no federal statute of limitations applicable to 1981, and the federal courts would look to the most nearly analogous state statute of limitations." Young v. International Telephone & Telegraph Co, 438 F.2d 757 (1971).

This United States Supreme Court, on June 19, 1975, ruled:

"A. Since there is no specifically stated or otherwise relevant federal statute of limitations for a cause of action under 1981, the controlling period would ordinarily be the most appropriate one provided by state law. See O'Sullivan v. Felix, 233 U.S. 318 (1914) (Civil Rights Act of 1871); Auto Workers v. Hoosier Corp., 383 U.S. 696, 701-704 (1966) (Labor Management Relation Act); Cope v. Anderson, 331 U.S. 461 (1947) (National Bank Act); Chattanooga

Foundry v. Atlanta, 203 U.S. 390 (1906) (Sherman Act); Campbell v. Haverhill, 155 U.S. 610 (1895) (Patent Act)."

Petitioner was racially discriminatorily discharged on February 8, 1971.

Petitioner filed the original complaint in the District Court on the 28th day January, 1975, well within the four-year statute of limitations prescribed by the California State Law, Section 337(1), California Code of Civil Procedure.

Based upon the above California Court Decisions; the United States Courts Appeals Decisions; and this United States Supreme Court Ruling; the denial of Petitioner's Motion For Leave To File Amended Complaint by the District Court in an order entered on May 5, 1976; has created a Federal Question in this Title 42, U.S.C., Section 1981 (A Federal Statute) Cause of Action.

Based on the above, this United States Supreme Court should review the record of Petitioner's Cause of Action, and change the decision of the District Court.

III. WHY THIS UNITED STATES SUPREME COURT SHOULD REVIEW PETITIONER'S TITLE 42, U.S.C., SECTION 1981 CAUSE OF ACTION; AND, CHANGE THE DECISIONS OF THE LOWER COURTS

A. Due Process Of Law, And Equal Protection Of The Laws

Petitioner have sought in the Federal Courts; and, is seeking in this Supreme Court the same God Given Human Rights that the very concerned and determined Congress sought on July 4, 1776, when these brave and concerned men wrote and signed the "Declaration Of Independence", as follows, in pertinent part:

> "We hold these truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness..."

Later, on September 17, 1787, the Delegates to the Convention put into final form and signed the Constitution of these United States of America.

The Human Rights struggle continued, and the United States Congress passed and adopted to the Federal Statute, Title 42, U.S.C., Section 1981, in 1866, as follows:

> "All person within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit to all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. 1977."

To aid in the above 1981 struggle for Human Civil Rights, this Supreme Court Reviewed and Ruled in Johnson v. Railway Express Agency on June 19, 1975, the followings, in pertinent part:

> TITLE 42, U.S.C., SECTION 1981, BEING THE PRESENT CODIFICATION OF SECTION 1 OF CENTURY-OLD CIVIL RIGHTS ACT OF 1866, 14 STAT. 27, ON THE OTHER HAND, ON ITS FACE RELATES PRIMARILY TO RACIAL DISCRIMINATION IN THE MAKING AND ENFORCEMENT OF CONTRACTS. ALTHOUGH THIS COURT HAS NOT SPECIFICALLY SO HELD, IT IS WELL SETTELED AMONG THE FEDERAL COURTS OF APPEALS -- AND WE NOW JOIN THEM -- THAT 1981 AFFORDS A FEDERAL REMEDY AGAINST DISCRIMINATION IN PRIVATE EMPLOYMENT ON THE BASIS OF RACE. AN INDIVIDUAL WHO ESTABLISHES A CAUSE OF ACTION UNDER 1981, IS ENTITLED TO BOTH EQUITABLE AND LEGAL RELIEF, INCLUDING COMPENSATORY AND UNDER CERTAIN CIRCUMSTANCES, PUNITIVE DAMAGES.

This Supreme Court again, ruled in 1975, in Johnson v. Railway Express Ageney, the followings, in partinent part:

> SINCE THERE IS NO SPECIFICALLY STATED OR OTHERWISE RELEVANT FEDERAL STATUTE OF LIMITATIONS FOR A CAUSE OF ACTION UNDER SECTION 1981, THE CONTROLLING PERIOD WOULD ORDINARILY BE THE MOST APPROPRIATE ONE PROVIDED BY STATE LAW.

This Supreme Court, also, Reviewed and Ruled in McDonald and Laird v. Santa Fe Trail Transportation Co. et al., on June 25, 1976, the followings, in pertinent part:

> TITLE 42, U.S.C., 1981 PROVIDES IN PERTINENT PART THAT "ALL PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES SHALL HAVE THE SAME RIGHT IN EVERY STATE AND TERRITORY TO MAKE AND ENFORCE CONTRACTS... AS IS ENJOYED BY WHITE CITIZENS.... WE HAVE PREVIOUSLY HELD WHERE DISCRIMINATION AGAINST NEGROES WAS IN QUESTION, THAT 1981 AFFORDS A FEDERAL REMEDY AGAINST DISCRIMINATION IN PRIVATE EMPLOYMENT ON THE BASIS OF RACE.

Petitioner's Motion For Leave To File Amended Complaint have been improperly denied; and, the Appeal improperly dismissed by the lower Courts.

Since this United States Supreme

Court has Reviewed and Ruled in the two (2) above 1981 Cause of Actions, this Court should likewise, Review and Rule in Petitioner's 1981 Cause of Action.

Article 3, Section 1, of the United States Constitution, states:

> "The judical power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Article 3, Section 2, Clause 1, of the United States Constitution, as follows:

> "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to

which the United States shall be a party; to controversies between two or more states, between citizens of different states; between citizens of the same state claming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens, or subjects."

The 14th Amendment of the United States Constitution, as follows:

"All persons born or naturalized in the United States, subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioner was born on November 2, 1925, in Madison County, Texas; and, was reared by two wonderful Christian Negro Parents (Black).

Petitioner received his education

in these United States of America; and, had the opportunity of serving in the U.S. Navy during World War II in the dangerous waters of the great Pacific Ocean in order to help guard and protect this great Nation, and the great things that this Nation stands for.

Therefore, Petitioner is in fact, a Natural Born Citizen of these United States of America; and, presently reside in the State of California; where all of Petitioner's 1981 Cause of Action has taken place.

As a Citizen of the United States, Petitioner has been improperly deprived of the "Equal Protection of Law", as precribed by the above 14th Amendment of the United States Constitution without "Due Process of Law", by the lower Courts.

The "Due Process of Law", and "Equal Protection of the Law" was denied to Petitioner when the District Court improperly denied Petitioner's Motion For Leave To File Amended Complaint; and, when the United States Court of Appeals, Ninth Circuit, improperly dismissed Petitioner's Appeal; and denied Petition For Rehearing.

In accordance with the above Article 3, Section 1, of the United States Constitution, this Supreme Court has the power to decide whether a federal, state or local law is constitutional, that is, whether a law is permitted or forbidden by the Constitution.

The District Court have ruled that the California State Law, 338(1), C.C.P., "A Liability Created by Statute", is the most appropriate State Law Controlling the Statute of Limitations in this Title 42, U.S.C., Section 1981 Cause of Action.

Petitioner has substantiated without a doubt that there was in fact a Written Contract that was discriminatorily Breached; and thereby, filed Motion For Leave To File Amended Complaint in order to conform to the evidence; and establish jurisdiction pursuant to Title 42, U.S.C., Section 1981; and, pursuant to the California Law, 337(1), C.C.P., as the most appropriate California State Law controlling the Statute of Limitations in this 1981 Cause of Action.

This Supreme Court has reviewed and made a ruling on the Statute of Limitations of a 1981 Cause of Action in Johnson v. Railway Express Agency, 421, U.S. 454 (1975), which was cited in the Motion For Leave To File Amended Complaint, and above, in this Writ of Certiorari. Therefore, it is the duty of this Supreme Court to be concerned, and thereby, correct this situation about this Supreme Court's Ruling not being adhered to, and respected by the Lower Courts in making their Rulings. This is what the above Article 3, Section 1, of Our United States Constitution is about, which states, in pertinent part:

"THE JUDICAL POWER OF THE UNITED STATES SHALL BE VESTED IN ONE SUPREME COURT..."

Therefore, this Supreme Court should review this 1981 Cause of Action, and make a Ruling in order to remove the Cloudy situation that exist in this 1981 Cause of Action in the State of California; whereby, an Honorable Federal Judge can sit on a Federal Bench in the Federal District Court with a Written Contract that was Breached; in the Pleadings before the Honorable Federal Judge's eyes; and, this Honorable Federal Judge rules that the Statute of Limitations in Petitioner's 1981 Cause of Action is controlled by 338(1), C.C.P., "A Liability Created by Statute."

This is surely a Federal Question that should be reviewed by this Supreme Court; and, a Ruling made in order to afford Petitioner the "Due Process of Law", and "Equal Protection of the Laws", in the Federal Court as prescribed by the 14th Amendment of the United States Constitution.

Petitioner abided by the "Sound Dicretion of the District Court", in correcting Petitioner's mistake, and in accordance with the Federal Rules of Civil Procedure; and, filed Motion For Leave To File Amended Complaint, as a Motion for relief from the final judgment of the District Court. On the "Sound Discretion of the District Court", the District Court conducted a District Court Hearing on the Motion For Leave To File Amended Complaint. The Motion was denied by a District Court Order. Petitioner appealed the District Court's "Denial Order" in accordance with the Federal Rules of Appellate procedure.

The United States Court of Appeals, Ninth Circuit, made an Inconsistant Ruling; and thereby, improperly dismissed Petitioner's Appeal by denying the Petition For Rehearing.

Therefore, the Court of Appeals has improperly denied Petitioner the Right of "Due Process of Law", and "Equal Protection of the Laws", in the Federal Courts as precribed by the 14th Amendment of the United States Constitution. This, surely, is a Federal Question that should be reviewed by this Supreme Court; and, a Ruling made.

The United States Congress, in accordance with the above Article 3, Section 1, of the United States Constitution; has ordained and established the United States Courts of Appeals, and the Districts.

As a result, most of the Federal Cases will begin, and end in the District Courts, or the Courts of Appeals. But, this Supreme Court has the Right to look over all such Cases, and change the decisions of the lower Courts, if they are wrong.

Based upon the facts, the United States Constitution, the State and Federal Statutes, the Federal Rules of Civil Procedure, and the Courts' Citations in this Writ of Certiorari; Petitioner strongly contend that the Decisions of the lower Courts were wrong.

Since this Supreme Court has the

right to review the records in this 1981 Cause of Action, this Supreme Court should review the records in this 1981 Cause of Action; and, change the decisions of the Lower Courts; in order that Petitioner can be afforded the "Due Process of Law", and "Equal Protection of the Laws", as prescribed and duly guaranteed by the 14th Amendment of Our United States Constitution.

CONCLUSION

Petitioner, respectfully request that this Supreme Court of the United States of America Review this Title 42, U.S.C., Section 1981 Cause of Action; order a reversal of the Lower Federal Courts' Decisions; and, the Motion For Leave To File Amended Complaint, So Granted.

DATED: April 20, 1977.

Respectfully submitted,

FLOYD H. DANIELS

In Propria Persona

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. _____

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public coporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

APPENDIX

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1. Statement of the Case; in Appellent Opening Brief, to United States Court Of Appeals, Ninth Circuit, In Pertinent Part. Page 50 through Page 59.

2. Amended Complaint For Discriminatory Breach of Contract, Proposed to be Filed. Page 60 through Page 69.

STATEMENT OF THE CASE,

IN PERTINENT PART

I, Floyd H. Daniels, Plaintiff-Appellant, herinafter referred to as ("Appellant") v. Southern California Rapit Transit District, Defendants-Appelles, hereinafter referred to as ("Appellees"), hereby submit this Motion For Leave To File Amended Complaint before the United States Court of Appeals, Ninth Circuit; upon an appeal from the judgment order in which the District Court entered on the 5th day of May, 1976, Providing that:

> "IT IS ORDERED, ADJUDGED AND DECREED THE MOTION FOR LEAVE TO FILE AMENDED COMPLAINT IS DENIED."

1. WRITTEN CONTRACT

The true fact is that there was a binding agreement, a written contract between Appellees and the United Transprotation Union, in which Appellant was a bonafide member; which was discriminatorily breached when Appellant was racially discriminatorily discharged on the 8th day of February, 1971.

Appelles' attorney filed a Motion For Summary Judgment In Favor Of Defendants in the District Court on March 26, 1975, which included an affidavit by He Michael Conlon; and A Declaration of

John S. Wilkins, Director of Industrial Relations for Appelles, which included the then existing written contract between Appellees and the United Transportation Union, of which Appellant was a member. This written contract can be found in the Clerk's Transcript, starting on page 29, through 44. Also, in the Declaration of John S. Wilken, are the documents from the time Appellant was put on suspension, and until Appellant was finally finally discharged on February 8, 1971, Clerk's Transcript, page 45 through page 68.

The Declaration of John S. Wilkens are as follows, in pertinent part:

> "On July 31, 1969, the District and the United Transportation Union entered in a contract, to which I am a signatory." (CT 29).

Again, the Declaration of John S. Wilkens, in pertinent part:

"Article 27 of the contract states:

"DISCIPLINE RULE

> "This labor Contract between the Southern California Rapid Transit District and United Transportation Union is based upon a spirit of cooperation between the employees and the District to provide a fair and equitable basis for the parties to handle discipline matters which may be brought before them.

> The parties do recognize the responsibility of each to provide fair treatment to both parties. In order that this preamble may effectuated to the fullest, the procedures for handling discipline matters in an amicable manner are generally outlined on the following Pages.
> Section 1. Hearing Before Discharge or Disqualification."
> (CT 37)

Also, the Declaration of John S. Wilkens, in pertinent part:

> "Article 56(a) of the contract provides:
> "Except as otherwise provided herein, this Contract shall be made effective June 1, 1969, and shall remain in full force and effect to and including May 31, 1972..." (CT 43).

2. EMPLOYMENT

Appellant was employed by Appelles as a bus operator on January 11, 1964.

After a conference with the Division Manager, Mr. James Carson, Appellant filed an application to teach in the Los Angeles Unified School District on September 26, 1968.

A Confidential Reference of Approval was submitted to the Los Angeles Unified School District on October 3, 1968,

by Appellees.

3. DUAL EMPLOYMENT

Appellant started performing dual employment of operating a bus for Appellees at night, and teaching mathematics in the Los Angeles School District during the day, on October 28, 1968. Appellant continued this dual employment with an excellent driving record through March 20, 1970; when Appellant was arrested on an allegation of a female passenger who sign a complaint with the Los Angeles Police Department.

4. SUSPENSION, HEARINGS, DISCHARGE, APPEALS REINSTATEMENT, AND FINAL DISCHARGE

On March 27, 1970, an Agreement was signed by Appellant, William C. Haag, Local Chairman of the Union, #1565; and, Mr. J.T. Johnston, Manager, Division 3207, for Appellant to remain on suspension without pay until Appellant's Case could be adjudicated in the Los Angeles County Superior Court. (CT 48).

On April 24, 1970, Appellees broke the written agreement signed on March 27, 1970. A former hearing was held at Division 3207; and, Appellant was discharged. (CT 50).

Pursuant to Article 27, Section 9, of the written contract, Appellant and the Union appealed the discharge. The discharge was upheld on May 6, 1970. (CT 51-52).

Pursuant to Article 27, Section 10, of the written contract, this action was further appealed; and, on June 11, 1970, Appellees wrote the following letter, in pertinent part:

> "The district is agreeable to reversing the decisions of Messrs. Brown and Rise on the discharge of falsification of sick report, et al, with the understanding that the agreement concerning the postponement of the hearing of March 27 is still in full force and effect. It must be further understood that in the event Operator Daniels is exonerated of the pending charge of attemped rape, he must then make an election as to whether he desires to work for the District as a bus driver, or for the Los Angeles City School District as a teacher. It is agreed that he cannot do both." (CT 53).

On June 19, 1970, Appellant received a verdict of "NOT GUILTY" by a Judge and Jury in the Superior Court, in and for the County of Los Angeles. (CT 55).

On July 1, 1970, a formal hearing

was held. At the conclusion of the hearing, the following notations were made on Appellant's Employee's Notice of Hearing:

> "July 1, 1970. District decision is: Reinstated to the service of the District upon receipt of proof from the L.A. City School District that they have accepted your resignation. This is with the understanding that as long as you work for the District, this will be your sole employment, and that there will be no payment for time lost. Mr. Daniels and Mr. Haag refused to accept. K.E. Parker, Manager, Division #3207." (CT 56).

Pursuant to Article #27, Section 9, of the written contract, Appellant and the Union appealed Appellees' second decision; and, on July 15, 1970, Appellees again offered to reinstate Appellant on the condition that Appellant sever his employment with the Los Angeles Unified School District. (CT 58).

Appellees' offer for reinstatement was amended on July 17, 1970 with conditions. (CT 59).

On July 19, 1970, Appellant was reinstated to the service of Appellees, with conditions. The reinstatement is substantiated by the Daily Report of payroll changes, dated October 5, 1970. (CT 126).

Pursuant to Article 27, Section 10, of the written contract, this reinstatement with conditions was appealed by Appellant and the Union; and, on July 28, 1970 a meeting was held between Appellees and the Union with no result.

On September 17, 1970, the Union requested arbitration in the following letter, in pertinent part:

> "Pursuant to Article 27, Section 11, of the labor Contract between the United Transportation Union and the Southern California Rapid Transit District, the Union therefore request that the dispute be submitted to arbitration pursuant to the provisions of Article 26, Section 11, of the labor contract. Mr. W.C. Haag, Local Chairman of Local 1565, has been designated by the Union as its member of the Arbitration Board. Please advise us as to the name of the District's Representative on the Board." (CT 60-61).

The Union's request was ignored by Appellees, which is contrary to the five (5) day period as specified in Article 26, Section 7, of the written contract. (CT 33-35).

On December 18, 1970, Appellees wrote a letter to the Union which state, in pertinent part:

> "For your information, we have been advised that Operator Daniels is presently teaching at Horace Mann Jr. High

School and as long as he maintain this employment, this will preclude his returning to work for the District and he, therefore, should be severed from our employ." (CT 62-63).

On January 28, 1971, Appellees made their final offer in a letter to Appellant, in pertinent part:

"We accordingly enclose a check in the amount of $1,098.24, representing the above mentioned compensation after appropriate deductions. In addition, we hereby offer you reinstatement upon the conditions above specified, which are that you accept the offer and sever your school System employment within the permitted five-day period. Your failure to comply with these conditions during such five-day period will, of course automatically result in the permanent loss of any reinstatement rights on your part." (CT 66).

On February 8, 1971, Appellant was finally racially discriminatorily discharged. The discharge is verified by the Daily Report of Payroll Changes, dated, March 25, 1971. (CT 127).

Appellant returned the check in the amount of $1,098.24 to Appellees on

February 27, 1971. (CT 67-68).

5. MATERIAL NEWLY DISCOVERED EVIDENCE

On November 18, 1975, Material Newly Discovered Evidence was discovered. This Material Newly Discovered Evidence consisted of four (4) White Bus Operator Employees (Caucasian) of Appellees who were performing dual employment. These four (4) White Bus Operator Employees (Caucasian) were found to be performing this dual employment long before Appellant (Black) started his dual employment of operating a bus for Appellees, and teaching school. These four (4) White Bus Operator Employees (Caucasian) were also performing dual employment when Appellant (Black) was finally racially discriminatorily discharged on February 8, 1971. Also, these four (4) White Bus Operator Employees (Caucasian) have continued to perform dual employment some (6) years, or more later, after Appellant (Black) was racially discriminatorily discharged on February 8, 1971. The Material Newly Discovered Evidence is substantiated by an "Affidavit Of Material Newly Discovered Evidence", by Appellant, which also, included Exhibits "A" and "B", by the Whalen Investigation Agency, 1807 West Beverly Boulevard, Los Angeles, California 90057. (CT 224-238).

Also, there is an "Affidavit of Additional Material Newly Discovered

Evidence", by Appellant, which also, include the Special Page in the brown envelope sent up to this Court of Appeals. (CT 259-263).

Appellees have not contested this Material Newly Discovered Evidence. In fact, Appellees have stated the followings:

> "Defendants will not, in the interest of brevity, and in hope of contributing to the conservation of judicial time contest the nature of the alleged newly discovered evidence or the adequacy of plaintiff's procedure." (CT 181).

FLOYD H. DANIELS

4650 Coliseum Street, #1
Los Angeles, California
90016
(213) 296-4588

Plaintiff, In Propria
Persona

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOYD H. DANIELS, Plaintiff, vs. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILTSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, Defendants.	Civil No. 75-290-EAC AMENDED COMPLAINT FOR DISCRIMINATORY BREACH OF CONTRACT

Plaintiff complains of Defendants, and, in so complaining alleges:

1.

Pursuant to Rule 15, Title 28, Federal Rules of Civil Procedure, Plaintiff amends his Complaint For Discrina-

tory Breach of Contract for Damages, in the Action filed in this Court on January 28, 1975.

2.

The jurisdiction of this Court is invoked under Section 1981, Title 42, United States Code, in that the Action arises under the "Equal Protection of the Laws" Clause, 14th Amendment, United States Constitution, implemented by Congress under paragraph (5) of said Amendment as Section 1981, Title 42, of said Code, enuciating individual common-law rights guaranteed and protected by said Amendment, as hereinafter more fully appears. Pursuant to Section 337(1), C.C.P., which provides for a statute of limitation of action to be brought on a written contract to be four (4) years, as the most appropiate State Law controlling the period of limitation in this Action.

3.

Plaintiff is, and during all times herein mentioned was, a natural-born citizen of the United States of America of Nego decent; Defendant SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT - SCRTD - successor in interest to the Los Angeles Metropolitan Transit Authority, came into being, and exists under, duly enacted Laws of the California Legislature, Defendant GILSTRAP being the General Manager thereof, said Defendants at all times herein mentioned residing, existing, operating, and coming within, the

jurisdiction of this Court; Plaintiff has at all times herein mentioned resided in Los Angeles County, California.

4.

On or about January 11, 1964, in full exercise of his common-law right to contract, a right protected and guaranteed to him under said 14th Amendment as enunciated in said Section 1981, Plaintiff entered into a written contract of employment with Defendant SCRTD or its predecessor as a Bus Operator therefor, said position being held by him for a period of more than six (6) years from said date pursuant to the Statute, of the State of California, governing the formation and continues existence of Defendant SCRTD.

5.

During the latter part of September, 1968, a J.C. Carson, then Manager of Plaintiff's Division 3207, discussed with Plaintiff his record of 65 demerits - a 90 demerit ceiling making discharge mandatory - notified him that approximately one-half of said demerits were assessed against him because of non-payment or slow-payment of debts; the denouement of said discussion was that Plaintiff endeavor to abtain a second job.

6.

On or about September 26th, 1968, after being interviewed for a teaching assignment with the Los Angeles School

Board, Plaintiff applied for a teaching assignment therewith and listed said J.C. Carson, of Defendant SCRTD, as a reference.

7.

On or October 3rd, 1968, in compliance with its own Rule 7, Defendant SCRTD authorized Plaintiff to accept and hold a secondary employment, said authorization being executed by a W.C. Scholl, Director of Industrial Relations, prior to Plaintiff's acceptance of a teaching assignment with said School Board which began on or about October 28, 1968.

8.

During the subsequent 17 months of authorized dual employment, Plaintiff's driving-record was exemplary, said 65 demerits diminished to 15, no accidents, and only one "missout" due to an unintentional misunderstanding about holiday schecule.

9.

On or about March 20th, 1970, Plaintiff was arrested for alleged attempted rape of one of his passengers, whereupon, by agreement between him, his Union, and Defendant SCRTD, he was suspended on March 27th, 1970, pending the outcome thereof.

10.

On or about April 24th, 1970,

Defendant SCRTD, by and through its Officers and Agents, violated its said agreement with said attempted rape, with his alleged violation of its said Rule 7, with his alleged violation of Section 1220, Title 13, California Administrative Code, and with his alleged falsification of sick reports; at a Hearing thereabout, Defendant SCRTD Arbitrarily tood Plaintiff off suspension and discharged him, although said rape charge was still pending in the California Superior Court.

11.

Said discharge of employment was appealed to the District General Manager of SCRTD, at the hearing of which Defendant SCRTD, dropped its charge of falsification of sick-reports, but its alleged violations of said Rule 7, and of said Section 1220, 13 C.A.C., were sustained though unproved at said hearing on or about June 11th, 1970.

12.

On or about June 19th, 1970, Plaintiff was unanimously acquitted, in said Superior Court, of said charge of attempt to commit rape.

13.

In his letter dated June 23rd, 1970, addressed to Kenneth R. Moore, Union Chairman, Plaintiff demanded that said Union take his Cause to arbitration in accordance with the provision there-

for in the Union Labor Contract; instead, a SCRTD-Division hearing was held on Plaintiff's alleged violations of said Rule 7 and of said Secton 1220, at which hearing said alleged violations were sustained, but he and the Union refused to accept said ruling.

14.

On July 19, 1970, Plaintiff was reinstated with the condition that the United Transportation Union send a letter signed by Plaintiff to the Los Angeles School Board, stating that he would resign if he commenced working for any other entity other than SCRTD. The United Transportation Union and Plaintiff refused the condition for reinstatment, and appealed to the highest Officer of SCRTD in accordance with the written contract.

15.

On or about September 17th, 1970, said Union addressed a letter to Defendant SCRTD requesting the invoking of Arbitration procedures under said Union Labor Contract and named its representative therefor; the date of the filing of Action, Defendant SCRTD has not complied with the provisions of said Labor Contract.

16.

After some month of further negotion between Plaintiff's Union and Defendant SCRTD, on or about January

28th, 1971, Defendant SCRTD offered to reinstate Plaintiff in its employment on the condition that, within 5 days he sever his employment with said School Board, tendering to him with its offer its check drawn in his favor for the amount of back pay it had been withholding from him; Plaintiff rejected, on or about February 27th, 1971, said offer and check, said rejection being made on the ground that he still had an unrevoked permission, pursuant to said Rule 7, to engage in secondary employment, and that no basis had been shown for its racially discriminatory demand that he not be dually employed.

17.

Although at no time did Plaintiff engage in any act of constituting misconduct or dereliction of duty with regard to his employment by SCRTD, nevertheless, said Defendant SCRTD, by and through its Officers and Employees, breached its said written contract with him by its discriminatorily depriving him of his vested right, granted under its Rule 7 to engage in dual employment because of his race (Black); ~~it also breached~~ it also breached its agreement of employment-suspension pending the determination of the attempted rape-charge by its unwarrantedly discharging him on trumped-up, non-existent, charges, to his shame and mortification; and it further breached its contract with him when other white bus operator (Caucasian) employees were engaged in dual employment, that he had its unrevoked permis-

sion, pursuant to its said Rule 7, that he could engage in dual employment, recial discriminatorily demanded without cause that he accept its employment exclusively.

Article #27, Section #1, Part (e) of the Written Contract holds, in pertinent part:

> "If after a review of a suspension, discharge or disqualification, it mutually agreed that an employee who was suspended, discharged or disqualified, was completely blameless of charges regarding the offense, he shall be reinstated to his former position without loss of seniority and will be paid wages lost as though he had not been suspended or discharged. It is mutually agreed that no entry shall be made on the employee's record of such suspension, discharge or disqualification, if by mutual agreement the employee was found to be completely blameless."

The Hearing Officers, the Appeals Hearing Officers, and other Oficers that sat in on the Hearing as employees for SCRTD were all White (Caucasian). These Officers fully knowing that Plaintiff was completely blameless of the alleged charges racially discriminatorily discharged Plaintiff on February 8, 1971. As a result of this racial discriminatory breach of contract on February 8,

1971, Plaintiff has suffered the following:

1. Loss of his position as a Bus Operator for SCRTD;
2. Loss in back pay in the amount of Eighty Thousand Dollars ($80,000.00);
3. Loss of retirement benefits and other benefits, the exact amount of which is unknown at this time.

WHEREFORE, Plaintiff prays for judgment in his favor and against Defendants as follows:

1. That Plaintiff be reinstated to his former position as a Bus Operator for SCRTD in accordance with Article #27, Section #1, Part (e), of the Written Contract;
2. Back pay set forth in this cause of action in the amount of Eighty Thousand Dollars ($80,000.00);
3. Retroactive restoration of all lost benefits, including retirement benefits.
4. Punitive and exemplary damages in the amount of One Hundred Fifty Thousand Dollars ($150,000.00), tax-free;
5. Attorney fees in accordance with contract between Plaintiff and Defendant SCRTD;
6. Cost of suit incurred;
7. For such other and further relief as this Court may deem just.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, FLOYD H. DANIELS, am Plaintiff in this Action; I have read the foregoing Amended Complaint and know the contents thereof; that the foregoing is true of my own knowledge except as to the allegations made on information and belief, and that as to those allegations, I believe it to be true.

_____
FLOYD H. DANIELS

Subscribed and sworn
before me this _____day of _____,1976.

_____
Notary Public in and for
said County and State

Lorraine Mitchell - Legal Briefs
732 E. WASHINGTON BOULEVARD
LOS ANGELES, CALIFORNIA 90021
TELEPHONE (213) 747-5631

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FILED
APR 26 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. _____ 76-1462

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FLOYD H. DANIELS
4650 Coliseum Street, Apt. #1
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(213) 296-4588 - 788-9450, Ext. 40

In Propria Persona

IN THE SUPREME COURT OF THE UNITED STATES

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FLOYD H. DANIELS,

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DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FLOYD H. DANIELS, *Plaintiff-Appellant,* vs. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the Southern California Rapid Transit District, *Defendants-Appellees.*	No. 76-2285 MEMORANDUM

[December 8, 1976]

Appeal from the United States District Court for the Central District of California

---

Before: CHAMBERS, HUFSTEDLER, and SNEED, Circuit Judges.

The order appealed from in this case is not appealable and the appeal must be dismissed. On June 12, 1975, a judgment was entered in this case which denied a motion to vacate a prior judgment entered on the 24th of April, 1975, and adjudged that plaintiff take nothing by his complaint. This was a final judgment disposing of the action, and plaintiff has never appealed from it. Instead, nearly six months later, on December 15, 1975, the plaintiff filed a notice of motion and motion to vacate the judgment and a motion for leave to file an amended complaint, both motions supported by certain affidavits. On January 12, 1976, a minute order was entered denying both the motion to vacate the judgment and the motion for leave to file an amended complaint. Assuming, without deciding, that the motion to vacate the judgment was properly made under Rule 60(b)(2), plaintiff never appealed from the order denying that motion. Instead, on

January 21, 1976, plaintiff filed a new motion for leave to file an amended complaint. The proposed amended complaint is virtually identical to the one tendered with the December 15, 1975 motion. Because a final judgment had been entered against plaintiff and because the court had denied plaintiff's motion to set the judgment aside under Rule 60, the second motion for leave to file an amended complaint has no significance. A plaintiff cannot continuously extend the time within which to appeal from an order by refiling his motion and getting another order entered. To tolerate this type of procedure would destroy the finality of judgments. Consequently, the order that was finally entered on May 5, 1976, denying the January 21 motion for leave to file an amended complaint, was not an appealable order. This is the only order from which the plaintiff has taken an appeal, his notice of appeal having been filed on May 12, 1976. The order not being appealable, the appeal must be dismissed.

Appeal dismissed.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

December 8, 1976

RE: 76-2285, FLOYD H. DANIELS VS. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, et al.

Dear Counsel:

An opinion was filed and a judgment entered in the above case today, Dec. 8, 1976, dismissing appeal.

You have (14) days, from the above date, in which to file a petition for rehearing.

The mandate of this court shall issue (21) days after entry of judgment unless the court enters an order otherwise. If a petition for rehearing is filed and denied, the mandate will issue (7) days after the entry of the order denying the petition.

Sincerely,

Emil E. Melfi, Jr.
Clerk of Court

See Rules: 36, 40 and 41 of the Federal Rules of Appellate Procedure.

CO 76.2

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FLOYD H. DANIELS, Plaintiff-Appellant V. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, et al., Defendants-Appellees.	)	No. 76-2285 ORDER

Before: CHAMBERS, HUFSTEDLER, and SNEED, Circuit Judges.

Appellant's petition for rehearing filed December 27, 1976 is DENIED.

Filed: February 7, 1977.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOYD H. DANIELS, Plaintiff, vs. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation, et al., Defendants.	)	NO. CV 75 290 EAC O R D E R

The Motion for Leave to File Amended Complaint of FLOYD H. DANIELS, having come on regularly for hearing on April 26, 1976, the Honorable E. Avery Crary, Judge presiding, Floyd H. Daniels appearing Impropria persona and Southern California Rapid Transit District and Jack R. Gilstrap appearing through Musick, Peeler & Garret, by Michael W. Conlon, and the matter having been argued and submitted:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion for Leave to File Amended Complaint is denied. The action was dismissed on April 24, 1975.

DATED: This 5th day of May, 1976.

E. Avery Crary

JUDGE , UNITED STATES DISTRICT COURT

FILED
MAY 23 1977

IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1462

FLOYD H. DANIELS,

Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

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IN THE

Supreme Court of the United States

October Term, 1976
No. 76-1462

FLOYD H. DANIELS,

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vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Statement of the Case.

In November, 1971, Petitioner filed a Petition for Writ of Mandate in the Los Angeles County Superior Court [C.T. 11] alleging the identical breach of contract which is the subject matter of this action [C.T. 13-17] against the Southern California Rapid Transit District (hereinafter "District") and its General Manager Jack R. Gilstrap (hereinafter "Respondents").

On October 10, 1972, Petitioner filed an Alternative Writ of Mandate in the State Court action [C.T. 19-20].

On November 20, 1972, Respondents filed a Motion for Summary Judgment in the State Court action [C.T. 23-92].

Said Motion was granted on November 30, 1972 [C.T. 95-96].

Petitioner filed a Notice of Appeal on January 22, 1973 [C.T. 96].

The judgment was affirmed. A copy of the decision of the Court of Appeal of the State of California appears at C.T. 94-102.

A hearing was denied by the California Supreme Court on April 24, 1974 [C.T. 104].

Petitioner filed a Complaint for Discriminatory Breach of Contract for Damages on January 28, 1975 [C.T. 1] in the United States District Court.

Although Petitioner alleged that he was discharged by the District approximately April 24, 1970 [Complaint, Paragraph 9, C.T. 3 and proposed Amended Complaint, Paragraph 10, C.T. 241], events showed that the District's Computer listed Petitioner as an employee until February 8, 1971 [C.T. 180].

Petitioner's Complaint alleged that the District violated *42 U.S.C.*, Section 1983 [C.T. 1] and *42 U.S.C.*, Section 1981 [C.T. 2, 5] when it fired him. The proposed Amended Complaint only alleges a violation of *42 U.S.C.*, Section 1981 [C.T. 239-245].

Respondents interposed a Motion to Dismiss and Motion for Summary Judgment (based on the ground that a California State action brought by Petitioner against the District and Mr. Gilstrap seeking reinstatement for the very same termination which is the subject matter of this action resulted in a judgment in their

favor which had become final) and, on April 17, 1975, the Motion to Dismiss was granted and the Motion for Summary Judgement was taken off calendar [C.T. 130]. The Trial Court, as reflected in the judgment entered April 24, 1975, found Petitioner's Complaint failed to state a claim upon which relief can be granted as the claims are barred by California's *Code of Civil Procedure*, Section 338(1) [C.T. 132].

Petitioner's Motion to Vacate Judgment was denied June 9, 1975 [C.T. 134].

An Amended Judgment was entered on June 12, 1975 [C.T. 135-136].

Petitioner's Motion to substitute himself in propria persona was granted on December 15, 1975 [C.T. 138-139].

On December 15, 1975, Petitioner filed a Motion to Vacate Judgment and Order, Motion for Leave to File Amended Complaint and a proposed Amended Complaint for Discriminatory Breach of Contract and on January 12, 1976 that Motion was denied [C.T. 210].

On January 21, 1976, Plaintiff filed another Motion for Leave to File Amended Complaint, Affidavit and proposed Amended Complaint [C.T. 211-247]. The Motion was denied on April 26, 1976 [C.T. 267] and the Order thereon entered on May 5, 1976 [C.T. 271]. Petitioner has appealed from that Order [C.T. 273].

I

Petitioner Did Not Properly Appeal.

The Memorandum Opinion of the United States Court of Appeal for the Ninth Circuit is set forth *in toto* in Petitioner's Appendix to Petition for a Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit. Petitioner not having properly appealed, it is submitted that that Opinion should be dispositive and this Court should deny the Writ.

II

Petitioner's Motion to File an Amended Complaint Was Properly Denied.

Even if Petitioner had properly appealed, his underlying causes of action are barred by California *Code of Civil Procedure*, Section 338(1), which states:

> "Within three years:
>
> (1) An action upon a liability created by statute, other than a penalty or forfeiture."

Petitioner, in seeking leave to file an amended Complaint alleging a breach of contract inspired by racial discrimination, could only have such proposed Amended Complaint relate back in time to no earlier than the date of filing of his original Complaint on January 28, 1975. This date is more than three years from either April 24, 1970 (the date Petitioner alleges he was discharged) or February 8, 1971 (the date the District's computer finally eliminated Petitioner under the listing of employees). Respondents submit that the only issue to be decided is whether Petitioner is barred by the Statute of Limitations.

42 U.S.C., Section 1981, the Statute upon which Petitioner bottoms his proposed Amended Complaint, reads as follows:

> "All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind and to no other."

This Court has held that the appropriate limitations period for an action brought pursuant to *42 U.S.C.*, Section 1981, is the most appropriate one provided by the State in which the action is commenced.

> "Since there is no specifically stated or otherwise relevant federal statute of limitations for a cause of action under §1981 the controlling period would ordinarily be the most appropriate one provided by state law. See O'Sullivan v Felix, 233 US 318, 58 L Ed 980, 34 S Ct 596 (1914) (Civil Rights Act of 1871); Auto Workers v Hoosier Corp. 383 US 696, 701-704, 16 L Ed 192, 86 S Ct 1107 (1966) (Labor Management Relations Act); Cope v Anderson, 331 US 461, 91 L Ed 1602, 67 S Ct 1340 (1947) (National Bank Act); Chattanooga Foundry v Atlanta, 203 US 390, 51 L Ed 241, 27 S Ct 65 (1906) (Sherman Act); Campbell v Haverhill, 155 US 610, 39 L Ed 280, 15 S Ct 217 (1895) (Patent Act)."

Johnson v. Railway Express Agency
421 U.S. 454, 462 [44 L.Ed.2d 295, 95 S.Ct. 1716 (1975)].

The Ninth Circuit has recognized that rule:

> "The pertinent provisions of the 1866 Civil Rights Act prescribe no period of limitations; hence, the

most nearly analogous state period of limitations applies. *See, e.g.*, United Automobile Workers v. Hoosier Cardinal Corp., 383 U.S. 696, 86 S. Ct. 1107, 16 L.Ed.2d 192 (1966) Young v. International Tel. & Tel. Co., 438 F.2d 757, 763 (3d Cir. 1971)."

"The most nearly applicable California statutes prescribe limitation periods not exceeding four years. *See* Cal. Code Civ.P. §§ 337, 338(1) (West 1972 Supp.) & 343 (West 1954). If any one of these statutes governs the longshoremen's § 1981 and §1985 actions, the filing of the complaint was decidedly tardy."

Griffin v. Pacific Maritime Association
478 F.2d 1118, 1119 (1973 9th Cir.).

Griffin did not enunciate which of the various California statutes of limitation was applicable since the most generous California statute was of four years duration and the Plaintiffs in *Griffin* were complaining about acts that commenced in 1946 and thus would be barred by any of the various statutes of limitation.

Respondents have been unable to locate a reported decision enunciating the appropriate statute of limitation period for a Section 1981 action where the State involved has a specific omnibus Statute of Limitations such as California *Code of Civil Procedure*, Section 338(1). However, Nebraska has a similar Statute of narrower application appertaining to Federal Statutes only which was operative in *Chambers v. Omaha Public School Dist.*, 536 F.2d 222, 228 (1976 8th Cir.) as follows:

"Nebraska has enacted a statute which clearly applies to actions founded upon federal statutes

such as § 1981 and § 1983. Neb.Rev.Stat. § 25-219 (Reissue of 1964) provides:

All actions upon a liability created by a federal statute, other than a forfeiture or penalty, for which actions no period of limitations is provided in such statute shall be commenced within three years next after the cause of action shall have accrued.

We are unable to conceive of any cogent reason why the clear wording of this statute precludes its application to the instant case, nor has plaintiff advanced any persuasive arguments to render the statute inapplicable. A Colorado statute similar to Nebraska's was applied in a § 1983 and § 1985 action in *Salazar v. Dowd*, 256 F.Supp. 220 (D. Colo. 1966). Tennessee has adopted a statute which establishes a one-year limitations period for actions 'brought under the federal civil rights statutes * * *.' Ten.Code Ann. § 28-304 (Supp. 1974); see Johnson v. Railway Express Agency, Inc. 421 U.S. 454, 456 n.2, 95 S.Ct. 1716, 1718 n.2, 44 L.Ed. 2d 295 (1975). We conclude that §25-219 governs in this case and, since plaintiff did not commence this action within three years of its accrual, his case was properly dismissed."

The Ninth Circuit has established that an action brought under *42 U.S.C.*, Section 1983, a companion to Section 1981, is controlled by *Code of Civil Procedure* Section 338(1) which provides a three year limitation. In *Smith v. Cremins*, 308 F.2d 187, 189-190 (1962 9th Cir.) the Court held as follows:

"The complaint was filed January 17, 1961. The incident upon which it was based is alleged to have occurred January 11, 1959. Since the Civil Rights Act contains no provision limiting the time within which an action may be brought under Section 1983, the applicable period of limitation is that provided by the statutes of California—the State in which the present action arose and the District Court was located. The District Court held that the appropriate California statute of limitations is California Code of Civil Procedure, Sections 340(3) and (6), which provides a one-year period applicable to actions for assault, battery, false imprisonment, and certain actions for damages for seizure of property. Appellant asserts that the appropriate California statute is Section 338(1) of the California Code of Civil Procedure, which provides that actions 'upon a liability created by statute' must be brought within three years.

"There are no decisions directly in point, and those most nearly analogous are inconclusive. The Court of Appeals for the Second Circuit, without discussion has applied the New York 'liability created by statute' limitation to an action under the Civil Rights Act, and the Court of Appeals for the Seventh Circuit has indicated that it would have applied that limitation to such an action had one been available in the statutes of Illinois. The Tenth Circuit, on the other hand, has applied the Kansas statute of limitations applicable to actions 'for injury to the rights of another, not arising on contract.'

"In determining which period of limitation to apply to an action under a particular federal statute,

the federal court accepts the state's interpretation of its own statutes of limitations, but determines for itself the nature of the right conferred by the federal statute.

"The California courts have held that an action is based 'upon a liability created by statutes,' within the meaning of Section 338(1), if the liability would not exist but for statute, or, conversely, an action is not based 'upon a liability created by statute' if the right is one which would exist at common law in the absence of statute. Though broadly stated, the distinction drawn is sufficiently discriminating for the present case.

"Section 1983 of the Civil Rights Act clearly creates rights and imposes obligations different from any which would exist at common law in the absence of statute. A given state of facts may of course give rise to a cause of action under Section 1983, but the elements of the two are not the same. The elements of an action under Section 1983 are (1) the denial under color of state law (2) of a right secured by the Constitution and laws of the United States. Neither of these elements would be required to make out a cause of action in common-law tort; both might be present without creating common-law tort liability. As Mr. Justice Harlan recently suggested, 'a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy even though the same act may constitute both a state tort and the deprivation of a constitutional right.'

"Practical considerations also support the selection of California's 'liability created by statute' limitation. According to Appellees' analysis, the single cause of action under the Civil Rights Act alleged in the complaint includes three distinct causes of action under State law and calls for the application of two distinct State statutes of limitations; appellant suggests still another possibility. Inconsistency and confusion would result if the single cause of action created by Congress were fragmented in accordance with analogies drawn to rights created by state law and the several differing periods of limitation applicable to each state-created right were applied to the single federal cause of action."

42 U.S.C., Section 1983 states:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

42 U.S.C., Section 1981 likewise creates rights and imposes obligations different from any which would exist at common law. Respondents submit that *Code of Civil Procedure*, Section 338(1) applies to Section 1981 violations just as it does to Section 1983 violations.

Conclusion.

Respondents submit that the Petition for Writ of Certiorari should be denied for the following reasons:

1. Petitioner has failed to demonstrate that his Petition raises a sufficient question of concern or that it involves a question of application broader than the scope of his particular matter.

2. Petitioner did not properly appeal from the actions of the United States District Court.

3. The United States District Court was correct in determining that Petitioner's action is barred by the appropriate statute of limitations.

4. Even if Petitioner were successful at this he would still be faced with the insurmountable barrier that his dispute with Respondents is barred by the doctrine of *res judicata*.

Respectfully submitted,

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Supreme Court, U. S.
FILED
MAY 27 1977
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1462

FLOYD H. DANIELS,

Appellant and Petitioner,

vs.

SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public corporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Appellees and Respondents.

REPLY BRIEF ADDRESSED TO ARGUMENTS FIRST RAISED IN THE BRIEF IN OPPOSITION

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IN THE

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Petitioner,

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SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT, a public coporation; and JACK R. GILSTRAP, as General Manager of the SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT,

Respondents.

REPLY BRIEF ADDRESSED TO ARGUMENTS FIRST RAISED IN THE BRIEF IN OPPOSITION

I

RULE 23, UNITED STATES SUPREME COURT

Petitioner abided by Rule 23 of this this United States Supreme Court in appealing, "Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respondents States:

> "The Memorandum Opinion of the United States Court of Appeal for the Ninth Circuit is set forth in toto in Petitioner's Appendix to Petition for a Writ of Certiorari to the United States Court of Appeal for the Ninth Circuit. Petitioner not having properly appealed, it is submitted that Opinion should be dispositive and this Court should deny the Writ."

Rule 23, United States Supreme Court, states; in pertinent part:

> "1. The petition for writ of certiorari shall contain in the order here indicated--
> (a) A reference to the official and unofficial reports of the opinions delivered in the courts below, if any, and if reported. Any such opinions shall be appended as provided in subparagraph (i) hereof...
> (i) There shall be appended to the petition a copy of any opinions delivered upon the rendering of the judgment or decree sought to be reviewed, including all opinions of courts or administrative agencies in the case, and, if reference thereto is necessary to ascertain the grounds of the judgment or decree, opinions in companion cases. The opinions shall include the caption showing the name of the court or agency issuing the same and the title and numbers of the case and the date of their entry. If whatever is

> "required by this paragraph to be appended to the petition is voluminous, it may, if more convenient, be separately presented."

Therefore, Petitioner has abided by the above Rule 23 of this United States Supreme Court in appealing the Appendix to Petition for a Writ of Certiorari. The Memorandum Opinion should NOT be dispositive, and, this Court should NOT deny the Writ because the Petition for a Writ of Certiorari has been properly appealed in accordance with the above Rule 23 of this United States Supreme Court.

II

MATERIAL EVIDENCE WARRANT JURISDICTION UNDER U.S. TITLE 42, SECTION 1981, AND, CALIFORNIA CIVIL CODE, SECTION 337(1).

Respondents states:

> "Respondents submit that the only issue to be decided is whether Petitioner is barred by the Statute of Limitations."

Petitioner has substantiated in the Petition for a Writ of Certiorari, that there was in fact a Written Contract between Respondents and the United Transportation Union, in which all employed bus operators, including Petitioner, were members. Respondents deducted a specific amount of each employed bus operator's earnings each month to be paid to the Union for membership, in order to be protected by the Written Contract.

A Copy of this Written Contract is in the Clerk's Transcript filed and docketed in the United States Court of Appeals, Ninth Circuit, as Civil Case No. 76-2285, on pages 29 through page 44.

Petitioner has substantiated in Petition for a Writ of Certiorari, that there was in fact, Racial Discrimination involved which brought about a Discriminatory Breach of the Written Contract, when Petitioner was finally discharged on February 8, 1971.

The purpose of the Written Contract, in pertinent part:

> "B. Provide for the fair treatment of said employees." (CT 29).

Therefore, Article 27, Section (e), of the Written Contract, which is quoted in Petitioner's Petition for a Writ of Certiorari, on pages 34 and 67 that was discriminatorily breached by a serious act of unfair treatment when Petitioner (Black) was finally discharged on February 8, 1971, for performing dual employment; while four (4) White Bus Operator Employees (Caucasian) were NOT discharged, and, has been permitted by Respondents to continue performing the dual employment.

Therefore, as a result of the discovery of material newly discovered evidence, Petitioner filed a Motion For Leave To File Amended Complaint, pursuant to Rule 15(b), Title 28, Federal Rules of Civil Procedure, to conform to the evidence, and establish jurisdiction pursuant to Title 42, U.S.C., Section 1981, and

and 337(1), C.C.P., based upon following material evidence:

1. MATERIAL EVIDENCE OF RACIAL DISCRIMINATION.

2. MATERIAL EVIDENCE OF A WRITTEN CONTRACT.

3. MATERIAL EVIDENCE OF A DISCRIMINATORY BREACH OF A WRITTEN CONTRACT.

Respondents have submitted to this by quoting a United States Court of Appeals, Ninth Circuit's Ruling in Griffin v. Pacific Maritime Association, as follows:

> "(1) The pertinent provisions of the 1866 Civil Rights Act prescribe no period of limitations; hence, the most nearly analogous state period of limitations applies. See, e.g., United Automobile Workers v. Hoosier Cardinal Corp., 283 U.S. 696, 86 S. Ct. 1107, 16 L.Ed.2d 192 (1966); Young v. International Tel. & Tel. Co., 438 F.2d 757, 763 (3d Cir.1971).
>
> "The most most nearly applicable California statutes prescribe limitation periods not exceeding four years. See Cal. Code Civ. P. 337, 338(1) (West 1972 Supp.) & 343 (West 1954). If any of these statutes govern the longshoremen's 1981 and 1985 actions, the filing of the complaint was decidely tardy." Griffin v. Pacific Maritime Association, 478 F.2d 1118, 1119 (1973).

The California Statutes listed in the above Griffin v. Pacific Maritime Association, by the Court of Appeals are Sections 337, 338(1), and 343; and, Petitioner has checked each one out as instructed in the above decision.

California Code of Civil Procedure, 338(1), states, as follows:

> "1. An action upon a liability created by statute, other than a penalty of forfeiture."

The California Courts, in 1955, held:

> "A liability created by statute is one in which no element of agreement enters. It is an obligation which the law creates in the absence of an agreement. (16 Cal. Jur. p. 143, 76; 53 C.J.S. p. 1051, 83; Higby v. Calaveras County, 18 Cal. 176, 179-180; Churchill v. Pacific Imp. Co., 96 Cal. 490, 492-493 (31 p. 560); Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969, 976." Gardner v. Basich Bros. Const. Co., 44 Cal. 2d 191 (1955).

The United States Court of Appeals, Ninth Circuit, in 1962, held:

> "The California Courts have held that an action is based 'upon a liability created by statute', within the meaning of section 338(1), if the liability would not exist but for statute. Or, conversely, an action is not based 'upon a liability created by statute' if the right is

> one which would exist at common law in the absence of statute." Smith v. Cremins, 308, F.2d 187 (1962).

Petitioner has substantiated without a doubt in Petitioner's Petition for a Writ of Certiorari, that there was in fact a Written Contract, and, as a result of the result of the final discharge of Petitioner (black) by respondents on February 8, 1971; created a Discriminatory Breach of the Written Contract.

Based on the above, this eliminates 338(1) C.C.P., as the most appropriate California State Law controlling the Statute of Limitations in Petitioner's Cause of Action.

This now leaves California Statutes 337 and 343. Both California Statutes have four-year statute of limitations.

To further check, 343 C.C.P., which states as follows:

> "Four years; relief not otherwise provided for."

This now leave only 337 C.C.P., to be checked out. Section 337 C.C.P., states:

> "337. Four years; written contracts; exception, book accounts; account stated based upon account in writing; balance of mutual; open and current account in writing; rescission of written contract."

Section 337(1) C.C.P., in pertinent

part:

> "Within four years: 1. An action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in section 336a of this code..."

Based upon the above, the California Code of Civil Procedure, Section 337(1), is the most appropriate California State Law controlling the Statute of Limitations in Petitioner's Title 42, U.S.C., Section 1981 Cause of Action, which is four (4) years. Also, the Courts Rulings cited in Petitioner's Petition for a Writ of Certiorari, on pages 35, 36, 37, and 38, very strongly and very soundly support 337(1) C.C.P., as the most appropriate California State Law controlling the Statute of Limitations in Petitioner's Cause of Action, which is four (4) years.

Petitioner was finally racially discriminatorily discharged by Respondents on February 8, 1971. Petitioner filed the Original Conplaint in the District Court on January 28, 1975, well within the four (4) year Statute of Limitations provided by the California State Law, 337(1),C.C.P.

The controlling Statute of Limitations in the State of California in Petitioner's Title 42, U.S.C., 1981 Cause of Action is not affected by the Statutes of Limitations in states of Nebraska, Colorado, and Tessessee, as Petitioner's Cause of Action commenced and happened in the State of California. Petitioner was a resident of the State of California when the Cause of Action begin, and still remain a resident

in the State of California. Respondents are located, and, has been always located in the State of California.

The California Legislature and the good Citizens of the State of California have have NOT included in any California Statute whereby, the Statute of Limitations of a Civil Rights Action be included in 338(1) C.C.P., "A Liability Created by Statute."

Therefore, the California Code of Civil Procedure, Section 337(1), is the most appropriate State Law controlling the Statute of Limitations in the Title 42, U.S.C., Section 1981 Cause of Action, which is four (4) years.

III

REMEDIES AVAILABLE, USED IN PETITIONER'S CAUSE OF ACTION ARE SEPARATE, DISTINCT, AND INDEPENDENT

In November, 1971, Petitioner filed a Petition for a Writ of Mandate, not a breach of contract, in the Los Angeles County Superior Court.

Petitioner filed a Complaint For Discriminatory Breach of Contract For Damages, in the Federal District Court on January 28, 1975.

On January 21, 1976, Petitioner filed the Motion For Leave To File Amended Complaint, in the Federal District Court.

As a result of the discovery of material newly discovered evidence of Racial Discrimination; Petitioner, pursuant to Rule

15(b), Title 28, Federal Rules of Civil Procedure, filed the Motion For Leave To File Amended Complaint, to conform to the evidence by striking Section 1983 from the Original Complaint.

Respondents have sought to persuade this Court to conclude that Section 1981, and Section 1983 are the same in respect to remedies.

Also, as a result of Petitioner filing a Petition for a Writ of Mandate in the Los Angeles County Superior Court on November 17, 1971, Respondents have concluded the following:

> "4. Even if Petitioner were successful at this he would still be faced with the insurmountable barrier that his dispute with Respondents is barred by the doctrine of res judicata."

The remedies available, and used by Petitioner in his Cause of Action in Petition for a Writ of Mandate, Section 1983, and Section 1981; although related, and although directed to most of the same ends; are separate, distinct, and independent.

The United States Court of Appeals, Third Circuit, in 1971, held:

> "We conclude that nothing in Title VII of the Civil Rights Act of 1964 imposes any jurisdiction barrier to suit brought under Section 1981 charging discrimination in private employment." Young v. International

Telephone & Telegraph Co., 438 F.2d 757 (1971).

This United States Supreme Court in Johnson v. Railway Express Agency, on June 19, 1975, ruled the followings, in pertinent parts:

> "Despite Title VII's range and its design as a comprehensive solution for the problem of invidious discrimination in employment, the aggreived individual clearly is not deprived of other remedies he possesses and is not limited to Title VII in his search for relief. The legislative history of Title VII manifests a congressional intent to allow an individual to pursue independently his rights under both Title VII and applicable state and federal statutes. Alexander v. Gardner-Denver Co., 415 U.S., at 48. In particular, Congress noted "the remedies available to the individual under Title VII are coextensive with the individual (sic) right to sue under the provision of the Civil Rights Act of 1866, 42 U.S.C., Section 1981, and that the two procedures augment each other and are not mutually exclusive..."
>
> "But these are the natural effects of the choice Congress has made available to the claimant by its conferring upon him independent administrative and judicial remedies..."
>
> "We generally conclude, therefore,

> that the remedies available under Title VII and under Section 1981, although related, and although directed to most the same ends, are separate, distinct, and independent." Johnson v. Railway Express Agency, 421 U.S. 454, 462; 44 L.Ed. 2d 295, 95 S.Ct. 1716 (1975).

The above argument in this Reply Brief Addressed To Arguments First Raised in the Brief in Opposition reflects, and substantiate more fully why Part III of the Argument in Petitioner's Petition for a Writ of Certiorari, pages 38 through 48, "Why This United States Supreme Court Should Review Petitioner's Title 42, U.S. C., Section 1981 Cause of Action; and, Change The Decisions Of The Lower Court"; should be considered by this United States Supreme Court in order that Petitioner can, and will be afforded the "Due Process of Law, and the Equal Protection of the Laws" as prescribed by the 14th Amendment of Our United States Constitution.

CONCLUSION

For the foregoing reasons, as more fully stated in Petitioner's Petition for a Writ of Certiorari, the Decisions of the Lower Courts should be reversed and remanded.

Respectfully submitted,

FLOYD H. DANIELS,

In Propria Persona